

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 10 and 13-20 are pending.

The Final Office Action rejects Claims 10 and 13-20 under 35 U.S.C. § 103(a) as unpatentable over Krivokapic, et al. (U.S. Patent No. 6,087,208, herein "Krivokapic").

As an initial matter, Applicants respectfully submit that the ground of rejection of Claims 13-20 is not fully and clearly stated in the outstanding Office Action.<sup>1</sup> The outstanding Office Action gives a common ground of rejection as to Claims 10 and 13-20, and it appears that the outstanding Office Action does not even address the subject matter of Claims 13-20. In other words, it appears that the outstanding Office Action lacks an explanation of how Krivokapic allegedly teaches or suggests the subject matter of Claims 13-20. Applicants respectfully submit that "[a] plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group."<sup>2</sup> Should the PTO continue to maintain that Claims 13-20 are unpatentable under 35 U.S.C. § 103(a) over Krivokapic, Applicants respectfully request the PTO to particularly point out in a non-final Office Action which part of the ground of rejection applies to each of Claims 13-20 so that Applicants may have the opportunity to reply completely.

Applicants respectfully traverse the rejection of Claims 10 and 13-20 under 35 U.S.C. § 103(a) as unpatentable over Krivokapic for the following reasons.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), each of three requirements must be demonstrated. First, Krivokapic must teach or suggest each and every

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<sup>1</sup> Where a claim is rejected the ground of rejection should be fully and clearly stated. MPEP, § 707.07(d).

<sup>2</sup> MPEP § 707.07(d).

element recited in the claim.<sup>3</sup> Second, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference in a manner resulting in the claimed invention.<sup>4</sup> Third, a reasonable probability of success must exist with respect to the proposed modification relied upon in the rejection.<sup>5</sup>

Claim 10 includes a step (e) of etching a second insulating film to form a sidewall. Thus, the material of the sidewall is an insulating film according to Claim 10.

The outstanding Office Action indicates that reference numerals 194 and 196 of Fig. 18 in Krivokapic correspond to the sidewalls of Claim 10. However, Krivokapic recites at column 8, lines 12-13 that “[n]ext, polysilicon spacers 194 and 196 are formed along sidewalls of the oxide 190”. Accordingly, Krivokapic does not disclose a sidewall formed of an insulating film since polysilicon is not an insulating film. The reference numeral 40 of Krivokapic indicates “thin gate oxide”. Therefore, polysilicon spacers 194 and 196 formed thereon are gate electrodes, i.e., conductive layers.

Accordingly, Applicants respectfully submit that the rejection of Claim 10 under 35 U.S.C. § 103(a) should be withdrawn. Claims 13-20 depend from Claim 10. Accordingly, Applicants respectfully submit that Claims 13-20 are allowable at least for the reasons given above with respect to Claim 10 in addition to the novel and non-obvious features recited therein.

In view of the foregoing remarks, Applicants respectfully submit that each and every one of Claims 10 and 13-20 defines patentable subject matter, and that the application is in condition for allowance. Applicants respectfully request reconsideration and reexamination of

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<sup>3</sup> MPEP § 2143.

<sup>4</sup> Id.

this application and timely allowance of the pending claims.

Respectfully submitted,

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<sup>5</sup> Id.